

111TH CONGRESS
2D SESSION

S. 3241

To provide for a safe, accountable, fair, and efficient banking system, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 21, 2010

Mr. BROWN of Ohio (for himself, Mr. KAUFMAN, Mr. CASEY, Mr. MERKLEY,
Mr. WHITEHOUSE, and Mr. HARKIN) introduced the following bill; which
was read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

A BILL

To provide for a safe, accountable, fair, and efficient banking
system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safe, Accountable,
5 Fair, and Efficient Banking Act of 2010” or the “SAFE
6 Banking Act of 2010”.

7 **SEC. 2. DEFINITIONS.**

8 (a) IN GENERAL.—As used in this Act—

1 (1) the term “appropriate Federal regulator”
2 means—

3 (A) the Board of Governors of the Federal
4 Reserve System (in this Act referred to as the
5 “Board”);

6 (B) the Comptroller General of the United
7 States (in this Act referred to as the “Comp-
8 troller”); or

9 (C) the Federal Deposit Insurance Cor-
10 poration (in this Act referred to as the “Cor-
11 poration”);

12 (2) the term “average total consolidated assets”
13 has the same meaning as in part 225 of title 12,
14 Code of Federal Regulations, as in effect on the date
15 of enactment of this Act, or any successor thereto;

16 (3) the term “FDIC-assessed deposits” means
17 the assessment base, as computed under part 327 of
18 title 12, Code of Federal Regulations, as in effect on
19 the date of enactment of this Act, or any successor
20 thereto;

21 (4) the term “financial company” means any
22 nonbank financial company that is supervised by the
23 Board;

24 (5) the term “liabilities” equals a financial com-
25 pany’s total assets less tier 1 capital;

1 (6) the term “nondeposit liabilities” means the
 2 total assets of a bank holding company, less tier 1
 3 capital, less FDIC-assessed deposits; and

4 (7) the term “tier 1 capital” has the same
 5 meaning as in part 225 of title 12, Code of Federal
 6 Regulations, as in effect on the date of enactment of
 7 this Act, or any successor thereto.

8 (b) NONBANK FINANCIAL COMPANY DEFINITIONS.—

9 (1) FOREIGN NONBANK FINANCIAL COMPANY.—

10 The term “foreign nonbank financial company”
 11 means a company (other than a company that is, or
 12 is treated in the United States, as a bank holding
 13 company or a subsidiary thereof) that is—

14 (A) incorporated or organized in a country
 15 other than the United States; and

16 (B) substantially engaged in, including
 17 through a branch in the United States, activi-
 18 ties in the United States that are financial in
 19 nature (as defined in section 4(k) of the Bank
 20 Holding Company Act of 1956).

21 (2) U.S. NONBANK FINANCIAL COMPANY.—The
 22 term “U.S. nonbank financial company” means a
 23 company (other than a bank holding company or a
 24 subsidiary thereof) that is—

1 (A) incorporated or organized under the
2 laws of the United States or any State; and

3 (B) substantially engaged in activities in
4 the United States that are financial in nature
5 (as defined in section 4(k) of the Bank Holding
6 Company Act of 1956).

7 (3) NONBANK FINANCIAL COMPANY.—The term
8 “nonbank financial company” means a U.S.
9 nonbank financial company and a foreign nonbank
10 financial company.

11 **SEC. 3. DEPOSIT CONCENTRATION LIMIT.**

12 Section 3(d) of the Bank Holding Company Act of
13 1956 (12 U.S.C. 1842(d)) is amended—

14 (1) in paragraph (2), by striking subparagraph
15 (A) and inserting the following:

16 “(A) NATIONWIDE CONCENTRATION LIM-
17 ITS.—No bank holding company may hold more
18 than 10 percent of the total amount of deposits
19 of insured depository institutions in the United
20 States.”; and

21 (2) by striking paragraph (5) and inserting the
22 following:

23 “(5) ENFORCED COMPLIANCE.—The Board
24 shall require any bank holding company having a de-
25 posit concentration in violation of this subsection to

1 sell or otherwise transfer assets to unaffiliated firms
 2 to bring the company into compliance with this sub-
 3 section.”.

4 **SEC. 4. LEVERAGE RATIO AND SIZE REQUIREMENTS FOR**
 5 **BANK HOLDING COMPANIES.**

6 The Bank Holding Company Act of 1956 (12 U.S.C.
 7 1841 et seq.) is amended by inserting after section 5 the
 8 following:

9 **“SEC. 5A. LIMITS ON LEVERAGE AND SIZE.**

10 “(a) LEVERAGE RATIO REQUIREMENTS FOR BANK
 11 HOLDING COMPANIES AND FINANCIAL COMPANIES.—

12 “(1) LEVERAGE RATIO.—No bank holding com-
 13 pany or financial company may maintain tier 1 cap-
 14 ital in an amount equal to less than 6 percent of av-
 15 erage total consolidated assets.

16 “(2) BALANCE SHEET LEVERAGE RATIO.—No
 17 bank holding company or financial company may
 18 maintain less than 6 percent of tier 1 capital for all
 19 outstanding balance sheet liabilities, as determined
 20 under section 13(m) of the Securities Exchange Act
 21 of 1934 (15 U.S.C. 78m(m)).

22 “(3) EXEMPTIONS.—

23 “(A) IN GENERAL.—The Board may ad-
 24 just the leverage ratio requirements provided in
 25 paragraph (1) or (2), for any class of institu-

tions, based upon the size or activity of such class of institutions. No adjustment made under this subparagraph may allow an institution to carry less capital than provided in paragraph (1) or (2).

“(B) ADJUSTMENTS.—Consistent with this subsection, the Board may adjust, by rule, the definitions of the terms ‘leverage ratio’ and ‘balance sheet leverage ratio’ to harmonize such ratios with official international agreements regarding capital standards, only if the Board determines that the international capital standards are commensurate with the credit, market, operational, or other risks posed by the bank holding companies or financial companies to which the international agreements regarding capital standards apply.

“(C) AUTHORITY OF OTHER REGULATORS.—

“(i) IN GENERAL.—The appropriate Federal regulator may, in a manner consistent with this subsection, grant any bank holding company an emergency temporary exemption from the ratio requirements provided in paragraph (1) or (2),

1 where necessary to prevent an imminent
 2 threat to the financial stability of the
 3 United States.

4 “(ii) PUBLICATION REQUIRED.—Any
 5 exemption granted under this subpara-
 6 graph shall be published in the Federal
 7 Register within a reasonable period after
 8 the date on which such exemption is grant-
 9 ed, not to exceed 90 days, and such publi-
 10 cation shall provide—

11 “(I) the name of the bank hold-
 12 ing company or financial company
 13 being granted an exemption;

14 “(II) the reason for the exemp-
 15 tion; and

16 “(III) the plan of the appropriate
 17 Federal regulator detailing the man-
 18 ner by which the bank holding com-
 19 pany shall be brought into compliance
 20 with paragraphs (1) and (2).

21 “(4) LEVERAGE RATIO REQUIREMENTS FOR OP-
 22 ERATING SUBSIDIARIES OF BANK HOLDING COMPA-
 23 NIES AND FINANCIAL COMPANIES.—Notwithstanding
 24 any other provision of law applicable to insured de-
 25 pository institutions, the Board shall, within 1 year

1 of the date of enactment of the SAFE Banking Act
2 of 2010, promulgate regulations establishing a lever-
3 age ratio and a balance sheet leverage ratio, in a
4 manner consistent with paragraphs (1) and (2), for
5 all operating subsidiaries of bank holding companies
6 and financial companies.

7 “(5) PROMPT CORRECTIVE ACTION.—

8 “(A) AUTHORITIES.—The Board shall re-
9 quire any bank holding company or financial
10 company that is in violation of paragraph (1) or
11 (2) to raise capital, sell or otherwise transfer
12 assets or off-balance sheet items to unaffiliated
13 firms, or impose conditions on the manner in
14 which the bank holding company conducts 1 or
15 more activities to bring the company into com-
16 pliance with paragraphs (1) and (2).

17 “(B) CORRECTIVE ACTION PLAN.—The
18 Board shall, not later than 60 days after deter-
19 mining that a bank holding company or finan-
20 cial company is in violation of paragraph (1) or
21 (2), present to the members of the Committee
22 on Banking, Housing, and Urban Affairs of the
23 Senate and the Committee on Financial Serv-
24 ices of the House of Representatives a plan de-
25 tailing the manner by which the bank holding

1 company or financial company shall be brought
2 into compliance with the applicable provision of
3 law.

4 “(C) REPORTS TO CONGRESS.—

5 “(i) WRITTEN REPORTS.—The Board
6 shall provide to the members of the Com-
7 mittee on Banking, Housing, and Urban
8 Affairs of the Senate and the Committee
9 on Financial Services of the House of Rep-
10 resentatives periodic reports for each 60-
11 day period during which a corrective action
12 plan required by subparagraph (B) has not
13 been fulfilled.

14 “(ii) TESTIMONY.—The Board shall
15 provide testimony to the Committee on
16 Banking, Housing, and Urban Affairs of
17 the Senate and the Committee on Finan-
18 cial Services of the House of Representa-
19 tives for each 90-day period that a correc-
20 tive action plan required by subparagraph
21 (B) has not been fulfilled.

22 “(b) LIMITS ON NONDEPOSIT LIABILITIES FOR
23 BANK HOLDING COMPANIES AND FINANCIAL COMPA-
24 NIES.—

25 “(1) BANK HOLDING COMPANIES.—

1 “(A) LIMIT ON NONDEPOSIT LIABILITIES
2 FOR BANK HOLDING COMPANIES.—No bank
3 holding company may possess nondeposit liabil-
4 ities exceeding 2 percent of the annual gross
5 domestic product of the United States.

6 “(B) DETERMINATION OF GROSS DOMES-
7 TIC PRODUCT.—The annual gross domestic
8 product of the United States shall be deter-
9 mined for purposes of subparagraph (A) using
10 the average of such product over the 16 cal-
11 endar quarters, as calculated by the Bureau of
12 Economic Analysis of the Department of Com-
13 merce, most recently completed as of the time
14 of the determination.

15 “(C) OFF-BALANCE-SHEET LIABILITIES.—
16 The computation of the limit under this para-
17 graph shall take into account off-balance-sheet
18 liabilities.

19 “(D) TREATMENT OF INSURANCE COMPA-
20 NIES.—Notwithstanding the liability limit es-
21 tablished in this section, the Board may set a
22 separate liability limit with respect to certain
23 bank holding companies primarily engaged in
24 the business of insurance, as the Board deems
25 necessary in order to provide for consistent and

1 equitable treatment of such institutions. In es-
 2 tablishing such separate liability limits for in-
 3 surance companies, for any insurance company
 4 with any subsidiary regulated by a State insur-
 5 ance regulator, the Board shall consult the ap-
 6 propriate State insurance regulator.

7 “(E) TREATMENT OF FOREIGN DEPOS-
 8 ITS.—Notwithstanding the definition of the
 9 term ‘nondeposit liabilities’ established in this
 10 section, the Board may exclude from its calcula-
 11 tion of nondeposit liabilities any foreign and
 12 other deposits not covered by the definition of
 13 the term ‘FDIC-assessed deposits’, if the Board
 14 deems such action necessary to ensure the con-
 15 sistent and equitable treatment of institutions
 16 with international operations.

17 “(2) FINANCIAL COMPANIES.—

18 “(A) LIMIT ON NONDEPOSIT LIABILITIES
 19 FOR FINANCIAL COMPANIES.—No financial
 20 company may possess nondeposit liabilities ex-
 21 ceeding 3 percent of the annual gross domestic
 22 product of the United States.

23 “(B) DETERMINATION OF GROSS DOMES-
 24 TIC PRODUCT.—The annual gross domestic
 25 product of the United States shall be deter-

1 mined for purposes of subparagraph (A) using
2 the average of such product over the 16 cal-
3 endar quarters, as calculated by the Bureau of
4 Economic Analysis of the Department of Com-
5 merce, most recently completed as of the time
6 of the determination.

7 “(C) OFF-BALANCE-SHEET LIABILITIES.—
8 The computation of the limit under this para-
9 graph shall take into account off-balance-sheet
10 liabilities.

11 “(D) TREATMENT OF INSURANCE COMPA-
12 NIES.—Notwithstanding the liability limit es-
13 tablished by this paragraph, the Board may set
14 a separate liability limit with respect to insur-
15 ance companies or other financial companies, as
16 the Board determines necessary in order to pro-
17 vide for consistent and equitable treatment of
18 such institutions. In establishing such separate
19 liability limits for insurance companies, for any
20 insurance company with any subsidiary regu-
21 lated by a State insurance regulator, the Board
22 shall consult with the appropriate State insur-
23 ance regulator.

24 “(E) TREATMENT OF FOREIGN DEPOS-
25 ITS.—Notwithstanding the definition of the

1 term ‘nondeposit liabilities’ established in this
2 section, the Board may exclude from its calcula-
3 tion of nondeposit liabilities any foreign and
4 other deposits not covered by the definition of
5 the term ‘FDIC-assessed deposits’, if the Board
6 deems such action necessary to ensure the con-
7 sistent and equitable treatment of institutions
8 with international operations.

9 “(3) PROMPT CORRECTIVE ACTION.—

10 “(A) AUTHORITIES.—The Board shall re-
11 quire any bank holding company or financial
12 company that is in violation of a provision of
13 paragraph (1) or (2), as applicable, to sell or
14 otherwise transfer assets or off-balance-sheet
15 items to unaffiliated firms, to terminate 1 or
16 more activities, or to impose conditions on the
17 manner in which the bank holding company or
18 financial company conducts 1 or more activities
19 to bring the company into compliance with
20 paragraphs (1) or (2), as applicable.

21 “(B) CORRECTIVE ACTION PLAN.—The
22 Board shall, not later than 60 days after deter-
23 mining that a bank holding company or finan-
24 cial company is in violation of paragraph (1) or
25 (2), present to the members of the Committee

1 on Banking, Housing, and Urban Affairs of the
2 Senate and the Committee on Financial Serv-
3 ices of the House of Representatives a plan de-
4 tailing the manner by which the bank holding
5 company or financial company shall be brought
6 into compliance with the applicable provision.

7 “(C) REPORTS TO CONGRESS.—

8 “(i) WRITTEN REPORTS.—The Board
9 shall provide to the members of the Com-
10 mittee on Banking, Housing, and Urban
11 Affairs of the Senate and the Committee
12 on Financial Services of the House of Rep-
13 resentatives periodic reports for each 60-
14 day period during which a corrective action
15 plan required by subparagraph (B) has not
16 been fulfilled.

17 “(ii) TESTIMONY.—The Board shall
18 provide testimony to the Committee on
19 Banking, Housing, and Urban Affairs of
20 the Senate and the Committee on Finan-
21 cial Services of the House of Representa-
22 tives for each 120-day period during which
23 a corrective action plan required by sub-
24 paragraph (B) has not been fulfilled.

25 “(c) DEFINITIONS.—As used in this section—

1 “(1) the term ‘appropriate Federal regulator’
2 means—

3 “(A) the Board of Governors of the Fed-
4 eral Reserve System (in this Act referred to as
5 the ‘Board’);

6 “(B) the Comptroller General of the
7 United States (in this Act referred to as the
8 ‘Comptroller’); or

9 “(C) the Federal Deposit Insurance Cor-
10 poration (in this Act referred to as the ‘Cor-
11 poration’);

12 “(2) the term ‘average total consolidated assets’
13 has the same meaning as in part 225 of title 12,
14 Code of Federal Regulations, as in effect on the date
15 of enactment of this Act, or any successor thereto;

16 “(3) the term ‘FDIC-assessed deposits’ means
17 the assessment base, as computed under part 327 of
18 title 12, Code of Federal Regulations, as in effect on
19 the date of enactment of this Act, or any successor
20 thereto;

21 “(4) the term ‘financial company’ means any
22 nonbank financial company that is supervised by the
23 Board;

24 “(5) the term ‘liabilities’ equals a financial com-
25 pany’s total assets less tier 1 capital;

1 “(6) the term ‘nondeposit liabilities’ means the
2 total assets of a bank holding company, less tier 1
3 capital, less FDIC-assessed deposits;

4 “(7) the term ‘foreign nonbank financial com-
5 pany’ means a company (other than a company that
6 is, or is treated in the United States, as a bank
7 holding company or a subsidiary thereof) that is—

8 “(A) incorporated or organized in a coun-
9 try other than the United States; and

10 “(B) substantially engaged in, including
11 through a branch in the United States, activi-
12 ties in the United States that are financial in
13 nature (as defined in section 4(k) of the Bank
14 Holding Company Act of 1956);

15 “(8) the term ‘U.S. nonbank financial company’
16 means a company (other than a bank holding com-
17 pany or a subsidiary thereof) that is—

18 “(A) incorporated or organized under the
19 laws of the United States or any State; and

20 “(B) substantially engaged in activities in
21 the United States that are financial in nature
22 (as defined in section 4(k) of the Bank Holding
23 Company Act of 1956);

1 “(9) the term ‘nonbank financial company’
 2 means a U.S. nonbank financial company and a for-
 3 eign nonbank financial company; and

4 “(10) the term ‘tier 1 capital’ has the same
 5 meaning as in part 225 of title 12, Code of Federal
 6 Regulations, as in effect on the date of enactment of
 7 this section, or any successor thereto.”.

8 **SEC. 5. CAPITAL ASSESSMENT PROGRAM.**

9 The Bank Holding Company Act of 1956 (12 U.S.C.
 10 1841 et seq.) is amended by inserting after section 7 the
 11 following new section:

12 **“SEC. 7A. CAPITAL ASSESSMENT PROGRAM.**

13 “(a) ANNUAL ASSESSMENTS.—Beginning 1 year
 14 after the date of enactment of the SAFE Banking Act
 15 of 2010, and annually thereafter, the Board shall conduct
 16 a capital assessment to estimate losses, revenues, and re-
 17 serve needs for bank holding companies and financial com-
 18 panies.

19 “(b) REPORTS.—The Board shall provide a report on
 20 the results of the capital assessment program under this
 21 section to the Secretary, the members of the Committee
 22 on Banking, Housing, and Urban Affairs of the Senate,
 23 and the members of the Committee on Financial Services
 24 of the House of Representatives.”.

1 **SEC. 6. AMENDMENT TO THE SECURITIES AND EXCHANGE**
2 **ACT.**

3 Section 13 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78m) is amended by adding at the end the
5 following new subsection:

6 “(m) STANDARD BALANCE SHEET CALCULATION
7 FOR REPORTS.—

8 “(1) ESTABLISHMENT OF STANDARD BALANCE
9 SHEET REPORTING.—Not later than 1 year after the
10 date of enactment of the SAFE Banking Act of
11 2010, the Commission, or a standard setter des-
12 ignated by and under the oversight of the Commis-
13 sion, shall issue a rule requiring that each issuer of
14 securities required to file reports under this section
15 record all of its assets and liabilities on its balance
16 sheets. The recorded amount of assets and liabilities
17 shall reflect a reasonable assessment by the issuer of
18 the most likely outcomes, given currently available
19 information. Such issuers shall record all financings
20 of assets for which the issuer has more than minimal
21 economic risks or rewards.

22 “(2) EXCLUSION FOR INDETERMINATE LIABIL-
23 ITIES.—If an issuer required to file reports under
24 this section cannot determine the amount of a par-
25 ticular liability, for purposes of paragraph (1), such

1 issuer may exclude that liability from its balance
 2 sheet only if it discloses an explanation of—

3 “(A) the nature of the liability and pur-
 4 pose for incurring it;

5 “(B) the most likely and maximum loss
 6 that the issuer could incur from the liability;

7 “(C) whether there is any recourse to the
 8 issuer by another party and, if so, under what
 9 conditions such recourse could occur; and

10 “(D) whether the issuer has any con-
 11 tinuing involvement with an asset financed by
 12 the liability or any beneficial interest therein.

13 “(3) RULEMAKING.—The Commission shall
 14 promulgate rules to ensure compliance with this sub-
 15 section, including enforcement by the Commission
 16 and civil liability under the Securities Act of 1933
 17 and this title.”.

18 **SEC. 7. EFFECTIVE DATE.**

19 (a) IN GENERAL.—This Act and the amendments
 20 made by this Act shall take effect upon the date of enact-
 21 ment of this Act.

22 (b) ALLOWANCE FOR BANK HOLDING COMPANIES
 23 AND FINANCIAL COMPANIES NOT IN COMPLIANCE AT
 24 DATE OF ENACTMENT.—Any institution that is in viola-
 25 tion of—

1 (1) the deposit concentration limit in section
2 3(d)(2)(A) of the Bank Holding Act of 1956, as
3 amended by this Act, as of the date of enactment of
4 this Act, shall bring itself into compliance with that
5 limit not later than 1 year after the date of enact-
6 ment of this Act;

7 (2) the leverage ratios in section 5A of the
8 Bank Holding Act of 1956, as amended by this Act,
9 as of the date of enactment of this Act, shall bring
10 itself into compliance with those ratios, not later
11 than 1 year after the date of enactment of this Act;
12 and

13 (3) the limits on nondeposit liabilities in section
14 7A of the Bank Holding Company Act of 1956, as
15 added by this Act, as of the date of enactment of
16 this Act, shall bring itself into compliance with those
17 limits, not later than 3 years after the date of enact-
18 ment of this Act.

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